

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested.

An Information Disclosure Statement is being submitted with this amendment for consideration by the Examiner and includes a copy of citations made in the specification as well as a copy of a PCT International Search Report for a corresponding PCT application.

Consideration of this information and an initialed copy of the PTO-1449 Form are requested.

The Examiner makes a number of objections and rejections to the initially filed claims under 37 C.F.R. §1.75 and 35 U.S.C. §112, second paragraph. Claims 1-10 have been canceled in favor of newly-submitted claims 11-29 which are believed to overcome the concerns raised by the Examiner. Withdrawal of these objections and rejections to the claims is respectfully respected.

The specification and abstract have been amended in order to improve their readability, consistency, grammar, and idiom. No new matter has been added. To assist the Examiner, a substitute specification which incorporates these numerous editorial changes is attached. Approval and entry are respectfully requested.

Claims 1, 2, 5, 6, 9, and 10 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent Publication 2002/0091626 to Johnson et al. in view of U.S. Patent 4,903,201 to Wagner. This rejection is respectfully traversed.

Johnson describes an electricity distribution system with producers and consumers receiving electrical power from an interconnecting network. Johnson's invention relates to an auction service where the supplier/provider of electricity can offer prices for a particular volume of electricity at a specific location and delivery time. A moderator allows competitors to adjust their bid in relation to each other and then selects which provider(s) will be used to deliver

electricity to specific end users at specific times. The purpose of Johnson's bidding auction is to arrive at the lowest possible price for the end user.

The Examiner rightly recognizes that Johnson fails to teach a number of features recited in the independent claims. The deficiencies in Johnson are understandable because like other known systems, Johnson fails to provide any incentive to the end consumer to change his/her own electricity use based on current market conditions for electricity. In Johnson's system, the electricity producers are still able, given their monopoly power, to establish a real time price for electricity that does not reflect their true electricity production costs. Consequently, such producers can inflate the electricity price.

Johnson also fails to recognize problems associated with peak power consumption. During peak power consumption moments, only those producers having an additional capacity can actually offer electricity. As a result, those producers can place any price on the offered electricity contract, and neither the moderator nor the consumer has any choice but to accept that price since it is unrealistic to expect consumers to simply shut off their electricity. This also results in high volatility in Johnson's electricity auction market.

In an attempt to remedy the many deficiencies of Johnson's energy supply auction service system, the Examiner relies on Wagner's description of an automated futures trading exchange. In contrast to Johnson's auction system where bidders compete with each other in providing different "contracts" within a limited timeframe after which the "best" price or prices are selected by the bidders to fill up the auction electricity volume, Wagner's futures exchange is a marketplace where dealers continuously provide bids and offers on "fixed contracts" and where trades are executed whenever a bid or an offer for a particular commodity match. The Wagner system is completely isolated from (and inaccessible to) end consumers of electricity. In other

words, the typical electricity consumer does not go to a futures market and purchase the electricity that the end consumer needs.

It would be plain to a person of ordinary skill in this art that it is not reasonable (indeed it doesn't even seem possible) to combine the teachings of Johnson and Wagner. Johnson's auction system is completely different from Wagner's futures trading exchange, so it would not be feasible to replace Johnson's auction system with Wagner's futures exchange. Indeed, Wagner's exact bid-offer matching system does not allow for the kind of back and forth auction bidding via a moderator described by Johnson. Indeed, Wagner's futures exchange system does not allow negotiations between members of the exchange. See column 3, lines 31-32. in contrast, Johnson is a negotiated system via a moderator.

Thus, the proposed combination would fundamentally alter the way one of Johnson and Wagner perform trading. As the Federal Circuit has commented, a proposed modification that renders a prior art reference in operable force intended purpose is inappropriate for an obviousness analysis. *In re Fritch*, 972 F.2d 1260, 1265-66 (Fed. Cir. 1992).

But even if Johnson and Wagner could be combined for argument's sake, their combination would not disclose the features recited in the independent claims. For example, neither reference discloses the claimed price information dissemination unit recited in claim 11 "for distributing price information corresponding to prices for the electricity contracts traded in the trading system," with each electricity consumer being connected in some fashion with that price dissemination unit "to enable each consumer to receive set price information." Johnson and Wagner simply do not disclose any means for distributing price information to a consumer of electricity and electricity distribution system. There certainly is no teaching in either reference of "means for enabling each consumer to vary electricity consumption based on the

received price information.” The remote terminals referred to in the Wagner text highlighted by the Examiner provide trading information to traders and members of the exchange. Although Wagner describes sending a price report to “public quote vendors” 592 in Fig. 15, it is certainly the case that public quote vendors cannot be reasonably interpreted as an end-user electricity consumers. A vendor is the opposite of a consumer. Thus, the combination of Johnson and Wagner lacks multiple features of independent claim 11.

Independent claim 16 is directed to a price dissemination unit “for disseminating electricity price information to a number of consumers of electricity connected an electricity network.” No such price information dissemination unit is disclosed or suggested in either Johnson or Wagner. Both references also lack the recited means in claim 16. Independent claims 20, 21, and 25 are also patentable over the combination of Johnson and Wagner for the reasons set forth above.

In addition, the Examiner’s alleged motivation to combine Johnson and Wagner is to “improve the efficiency and effectiveness of electricity futures contracts within an electricity distribution system.” This motivation is flawed. First, the Examiner never indicates how efficiency and effectiveness would be improved. Second, as already explained above, modifying the auction based system of Johnson with the automated futures system of Wagner which is based on exact bid-offer matches is simply unreasonable because it is a dramatic departure from the system described in and the basic approach used in Johnson.

The fact that neither Johnson nor Wagner recognizes or addresses the problem to which the present invention is directed is a significant factor that reinforces the conclusion that the

Examiner's obviousness rejection is improper and should be withdrawn. As the Federal Circuit has explained:

In other words, the Examiner must show reasons that the skilled artisan, confronted with the same problem as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for the combination *in the manner claimed*. (Emphasis added.)

*In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

One of the problems that the inventor wanted to solve was the fact that only producers currently have an impact on the electricity market. The inventor's solution was to design a new infrastructure for distributing electricity where both consumers and producers have an impact on that electricity market. Neither Johnson nor Wagner describes or indicates any advantage with allowing consumers to have such influence.

Another problem the inventor addressed is the variation in electric power required for balancing. Electricity must be produced and consumed simultaneously, which requires real-time, accurate control of production and distribution. This electric power balancing must take place under widely different circumstances and at various time during the day and night, summer, winter, etc. Despite relatively stable general trends for electricity production and consumption, there are still small, unpredictable, and rapid variations from the general trend. In peak power demand, producers are often required to have power generation sites that can be used to provide electricity even if they are used only a few hours during the year. That backup, additional electricity generation during peak periods is very expensive, and its high price affects the overall price for all power generated during that period--irrespective of the power source. As a result, all consumers must pay a high price for a brief period of increased power demand required by only a fraction of all consumers. This situation also causes significant fluctuations in the electricity

market. In other words, there is a "chain reaction" affect where high volatility on the balancing market causes high volatility on the day ahead ("spot") market which also impacts the electricity's futures market (long-term contracts). Ultimately, the end consumer pays for this volatility.

But with the technology described in the application, electricity consumers can respond to an increase in electricity price by reducing their electricity use. Even a minor reduction in electricity use will rapidly impact the electricity demand during peak periods. That reduced demand may be sufficient so that additional power generation may become unnecessary, which in turn, eliminates the associated price peak. All consumers benefit both from reduced costs and reduced volatility. A more stable market attracts more traders, thus increasing liquidity and driving the electricity market towards efficient market prices for electricity.

Neither Johnson nor Wagner recognizes the above-described problems, proposes a solution to those problems or recognizes the benefits that come from resolving those problems. Indeed, the technology described in this application provides electricity consumers the necessary information and motivation to vary the individual consumer's electricity use. This not only benefits the end consumer but also creates a much more efficient and effective electricity market.

The application is in condition for allowance. An early notice to that effect is earnestly solicited.

GUSTAFSON

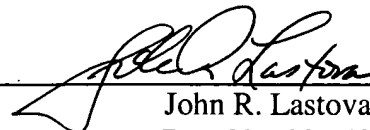
Appl. No. 09/957,457

May 12, 2005

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:

A handwritten signature in cursive script, appearing to read "John R. Lastova", is written over a horizontal line.

John R. Lastova

Reg. No. 33,149

JRL:sd

1100 North Glebe Road, 8th Floor

Arlington, VA 22201-4714

Telephone: (703) 816-4000

Facsimile: (703) 816-4100